The term "judicial independence" is used to mean that both the constitutional institution of the judiciary [collectively] and its individual judicial officers are free from interference by other institutions and individuals. It connotes a constitutional arrangement of a separation of the judicial power from the executive and legislative powers. Although this does not define the term fully, since judicial independence has many facets and is an evolving concept in South Africa, the definition is widely accepted and is sufficient to draw out its main purpose: it is a means toward the end of giving effect to what the Constitution requires - that the courts are independent and subject only to the Constitution and the law, which they must apply impartially and without fear, favour or prejudice.

A judiciary that cannot be depended upon to decide cases impartially and without submitting to influence is not fulfilling its role and undermines public confidence. Judicial independence is important because the judiciary must protect individual rights; contribute to the stable balance of power, countering public and private corruption and dishonesty; resolving commercial disputes, address criminal problems, provide mutual, international assistance in civil and criminal matters and so on. Its importance and also its vulnerability is underscored by the constitutional injunctions that no person or organ of state may interfere with the functioning of the courts and that organs of state, through legislative and other measures, must assist and protect the courts to ensure the independence, impartiality, dignity, accessibility and effectiveness.

The linkage between judicial independence and judicial education

In recent history the lower courts in South Africa were part of the executive branch of government and functionally subject to parliamentary sovereignty and racist ideology with severe consequences for human rights. The new constitutional era has seen the introduction of measures aimed at transforming the past. The transformation process necessarily entails the realization of not only the legitimacy of the holders of judicial office, but also their capacity to deliver justice in accordance with the constitutional imperatives of upholding the rule of law and manifesting judicial independence.

It is axiomatic that only judicial officers who know the law and how to apply it can be competent in exercising the judicial function efficiently and independently. Capacity building is a process that must include ongoing judicial education and training. Knowledge of the law and its application must not be understood in the abstract sense, but in the context of the past, the present and the future. "The law", in this sense, entails an understanding of (i) what judicial independence is and what its purpose is, (ii) that the law is constantly changing; (iii) that methods of interpretation and values, which may not have previously applied, apply; (iv) that articulating reasons for judgment is aimed at establishing judicial rationality, transparency and accountability; (v) that social context in judicial decision making is a relevant factor and (vi) that the lower courts are bound to protect individuals against the abuse of administrative power, unfair discrimination, domestic abuse and violence and to adjudicate in matters pertaining to access to information; to name a few examples.

Judicial education and training can contribute to reversing trends and attitudes such as executive-mindedness, stereotyping, inability or reluctance to think independently, limited understanding or application of judicial ethics, and keeping judicial officers up to date with application of innovations in domestic legislation.

The point is perhaps best illustrated by a practical example: a certain magistrate imposing a sentence which is subject to automatic review in proceedings recorded in longhand routinely submits a brief written statement of reasons for conviction and sentence with each case. However generally in such matters, the reasons for conviction and sentence are conveyed orally in open court by magistrates and not reflected on the record. What can other judicial officers learn from such a practice? If they understood it to mean that the magistrate concerned is affirming that she is accountable to the High Court for her decisions, is seeking to justify them and is thereby asserting her independence, would they follow suit and implement such practice? If the practice had the effect of minimizing or obviating the need for judges to query the magistrate on review, would it reflect on the capacity of the magistrate concerned, showing that she is competent and efficient in the discharge of the judicial function? Could such a practice enhance a magistrate's skills in writing judgments? Individual judicial officers reading this should be able and are invited to relate from personal experience how their judicial independence is linked to judicial education.

If there is any remnant of doubt as to whether or not judicial training is permissible under the South African Constitution, section 180(a) provides: National legislation may provide for any matter concerning the administration of justice that is not dealt with in the Constitution, including training programmes for judicial officers.